

S.B. CIVIL REVISION PETITION NO.91/2007

Bhajan Lal.

vs.

Satya Devi and others.

Date : 26.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.GR Goyal, for the petitioner.

Mr.BS Sandhu, for the respondents.

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Heard learned counsel for the parties.

According to learned counsel for the petitioner/plaintiff, the petitioner filed a suit for specific performance of contract for purchasing the property in dispute which the respondents/defendants agreed to sell to the petitioner. The defendants were bound to sell 5/6th share in the property in dispute as per the agreement. The respondents did not sell the property in dispute to the petitioner, therefore, he filed the present suit which was decreed by the Court of Additional District Judge, Srikananpur on 12.2.2002. The trial court decreed the suit of the

petitioner but only for 4/6th share in place of total 5/6th share in the property. The trial court while doing so, did not reduce the consideration proportionately. The petitioner thereafter submitted an application under Section 152 CPC for correction in the decree but that was rejected by the trial court.

The petitioner preferred revision petition before this Court to challenge said order of the trial court passed on the application under Section 152 CPC. That revision petition was withdrawn on 7.5.2004 so that the petitioner could move the review petition for reviewing the judgment and decree dated 12.2.2002.

The petitioner moved review petition under Section 114 CPC (read with Order 47 CPC) which was dismissed by the trial court on the ground of delay.

Hence, this revision petition.

It appears that the petitioner's case was that he entered into agreement to purchase 5/6th share of the property. In the suit for specific performance of contract, he could obtain the decree for sale of 4/6th share. The trial court did not reduce the consideration proportionately. In view of the above, the proper remedy could have

been filing of suit for refund of the amount of excess consideration paid for the purchase of the property. Neither the application under Section 152 CPC was proper remedy nor the review could have been proper remedy. Even if the review could have been proper remedy, even then in a suit for specific performance of contract, the Court passes decree for specific performance of contract and in the contract, consideration was shown Rs.1,50,000/-. If the petitioner after paying the amount gets less property, then his right to get refund of the amount remains intact and, therefore, the petitioner could have availed the remedy of filing of suit for refund of the amount even after rejection of his review petition.

In view of the above, I do not find any merit in this revision petition and the same is hereby dismissed.

However, in case, the petitioner filed a suit for refund of the amount, then he may move an application under Section 14 of the Limitation Act for condonation of delay.

(PRAKASH TATIA), J.

S.Phophaliya